G. R. S. 58

Previous references.

Legn 9–09

1–12A

Later references

1909–10
(Legislation)

File No. 9 – 09

Serial Nos. 13 – 14

P–44

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 13 – 14

Part B. for November 1911.

SUBJECT.

The Small Cause Courts Regn

D.O. papers.

From — Hon. Narasinga R.
Sub-Judge, Mysore

From R.B. Plumer Esqr
Dist: Judge, Mysore

GPB ..8,000—7-4-07

Crownson

G.R.S. 11] 191/-/2

GENERAL AND REVENUE SECRETARIAT.

Legs)

NOTES

File No. 9-09

FILE HEADING.

The Small Cause Courts Regulation

From

No.	Dated	Received

Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

NOTES—First Sheet.

P. T. O

GPB—30,000—12-8-11

Serial No.

18 D.O. dated 2/6/11
From D. M. Narasinga Rao Esqr
Sub-Judge, Mysore
Forwards as personally directed by Dewan his note on secs: 7 & 8 of the Regn.

19 D.O. dated 22/6/11
From R. B. Plumer Esqr
District Judge, Mysore
Forwards as personally directed by the Dewan, his note on secs: 7 & 8 of the Regn:

Dewan's orders on the D.O.s.

On 18:- "Legs Br. Place on the File
Intd D.A.R.
3/7/11

2)
On 19:- "Legs Br. 1. Acknowledged with thanks 2. Place on the file
Intd D.A.R.
3/7/11

submitted with a draft letter to Mr. R. B. Plumer — Mysore D.

(S.S.)
6/7/11

NOTE—Contn. sheet.

NOTE—Contn. sheet

G.R.S. 13]

Routine Notes

To be used only for notes, requisitions, etc., not intended for permanent record.]

3

Solicits orders as to whether
the Notes on clauses 7 & 9
the Small Cause Ct Court Regn-
atns by Messrs R.B. Plumer
& M. Narasinga Rao should
be printed along with the ~~other~~
other papers of the file

SN(III)
18/11/11

L)

No

Asst Secy

18/11/11

Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—30,000—23-2-1

G.R.S. 13]

Routine Notes.

[To be used only for notes, requisitions, etc., not intended for permanent record.]

(5) Submitted

The two letters have been removed from the file. They may be joined into B. 1. as they are rather important ones.

(S.B.) 24/11/11

N. B.—Should routine notes be written on small slips, the notes must be copied, or slips pasted on this form.

GPB—30,000—23-2-11

Legislative 9/1904-15 2779

Mysore.

Secret

dated 22.6.11.

From the Secretary to Government

To Mr. Ananda Rao.

Sir,

I am directed to forward herewith a copy of a note on the proposed new clauses 70 & 71 of the Mysore Civil Courts Regulation passed in May last by the Legislative Council.

I enclose a note herewith. I have carefully considered the clauses & I consider them

most inexpedient clause to
work with inextricably interwoven
Cl. 7 is absolutely certain to
promote forgery perjury obstruc-
tion & cannot tend to that stability
which the Legislative Council
put forward as one of its chief
advantages
Cl. 8 as it stands is quite
unworkable unfeasible - it is

also most unnecessary

Given my reasons for these
strong opinions in my note

Yours Sincerely

K B Hemmer

Copy to
Mr Mitchell
Mr Lee
Mr Zuckerman
Mr Bailey

nal } perjury is rare & the fear of certain prosn & heavy pnt an effectn deterrent. Forgery is rarer still.

Note on clauses 7 & 8 Leg 7 Sept 56

Messrs Small Cr. — Courts Reg: 19-

By cl. 7 the Court is given power to "non-suit a plaintiff, where the evidence on either side is unsatisfactorily prove either party's case

In such case the pp who has been non-suited may bring a fresh suit the same cause of action (Subject to limitation)

It is said that this provn is based on sect 93 of the Indn Cvnly Courts Act 1887

Granted that this is correct — (I have not the full act in front of me but I will show presently why I do not think it is correct) — still suppose it is, Can it for a moment be believed that

(5)

because such a provision is found beneficial in England it would necessarily or even probably be also suitable under the conditions prevailing in Mysore.

on the two issues of the Amount of manufact. documentary evidence adduced in the Courts in Mysore (2) the amount of concocted tutored oral evidence adduced in those courts, with that adduced in the same garam-garam approaches in the County Courts in England.

I venture to say there are more forged docts. & false witnesses in one Court in Mysore

Leg 7 1/09 [56

in a quarter than would be produced in a year in all the County Courts in England

This is fact and it cannot be ignored — for the immediate result of the proposed enactment will be an unsuccessful petition, & one action will be followed by a same cause of action will be followed by a prosecution for perjury or forgery of perjury so that either indeed will increase to an enormous extent; and they are already over-worked, — or the Crim[l] Courts will be swamped with prosecutions in respect of offences of this description committed in the Courts of Small Causes where forgery & perjury are practised almost with impunity

in English Courts except 1. Defence witnesses in a crim. case in a Mag.
2. in some classes of Commercial cases
3 in Cases in the Brch of Divorce Probate Courts

But I venture to submit that the provs as non. suit in the County Courts Act have not been followed - my reasons are as follows :-

In the Encyclopaedia of the Laws of England under County Courts at p 537 Vol 3. will be found this :-

In any other action founded upon contract, the plff may (except as hereinafter provided) on the trial by leave of the judge or he may direct "judgment by non suit", or absolve the deft from the case, subject to the judges power to grant a new trial, such judgt shall be final"

How term is Non-suit - in the same encyclopaedia Vol. 9. p 180. it is there stated that formerly non-suit was, in theory the voluntary abandonment

Now by order 36.11.07 the judge must enter judg't either for pl'ff or def'ts & the matter being thus res judicata cannot be reopened - at all events without leave

[Fox v. Star Newspaper Co 1898 1.Q.B 636 -]

So that now there is strictly speaking no such thing as a non suit - but the word is still used to describe the act of a judge when he withdraws a case from the jury directs judg't for the def'ts without (or in spite of) their verdict:

I think the above sufficiently proves my initial contention that the provisions at present before the consid'n of Parl't in respect of

Eq 1 Sept (60

by a plaintiff of his suit because either some material evidence was not forthcoming or because of a strong adverse opinion expressed by the judge as to his case. By withdrawing his suit he escaped judgt against him and though he had to pay Defts costs he was at liberty to bring another action for the same cause. But note that no plaintiff could be thus treated as against his will

in 1873 under the Judicature Acts by order 41 r. 6. whereas by 1875 this power the Plaintiff was deprived of

powers of bringing a fresh suit on the same

That a

cause of action

judgment of nonsuit should have the same effect as a judgt for Defts.

Mysore

Mr. S. M. Narasinga Rao 'Subordinate Judge Mysore
with considerable practical experience of Sm. Cau
juris d^n has favored it his separate opinion
' Arrived at same without any discussion
between us on the point'

He says " My view is that ther(clauses 7 & 8.)are not only needless
but injurious - non suiting is likely to encourage
perjury and unrighteous litig^n. " -

Clause 8. is said to be based on sects 102 & 103
County Courts Act 1888 - Those sects provide
Sect 102 - That in every action except those of the nature
of causes assigned to the Chancery D^n of the High
Court (i.e. in every "common-Law" action
e.g. arising out of contract or Tort -

Cl 7 9/9/05 (62

the non suiting of a plaintiff are not in
accordance with the provisions of the Court
Canada Act & English Civil Procedure

Non suit" was a highly technical piece of
old time procedure & this does not appear
to have been fully appreciated by the
members of the Legislature Council when
they passed the present provisions —

So far therefore as cl. 7 goes I am very decided
of opinion that they are not only inexpedient
but insulted [illegible] conditions prevailing
in this province [illegible] & more over we
will work most inconvenience & injuriously

(64

in which the claim exceeds £5 either party may require a jury. Such jury consists of five persons summoned from those qualified and liable to serve as jurors at assizes — (S. 102)

By sect. 103 provision is made for the judge on applic by either party to summon persons of skill in the matter to which the action relates to act as assessors

How consider on the provisions of sect clause 8 of the Mgs. Sm. C. Regns as last amended by the Legislative Council (Mgs. Gaz. May 11 1911)

"Where such application has been made allowed, the case shall be heard by a Court composed of the judge before whom the suit

has been included and more names to be selected
accordance with rules to be framed by the Chief Court"
and Mr. H. V. Nanjundayya in respect of this same
a list may be framed of persons eligible
to be elected as jurors & parties may be given an
choice to select proper persons therefrom"
a less workable proposition or would be hard to

Compare the class of persons in regard Courts
"Towns where Courts Courts are not
qualified and likely to serve as jurors at
sessions - leading citizens of high educa

Lee + Sylvia (16

+ good social status, retired officials of ripe experience & business men of good education & sound commercial training — with the class of men eligible to be elected as jurors (sic, Civil Cases assessors in the towns in Mysore in which the Courts of small causes are estab'd. in which the Courts of small causes are estab'd. moreover under the Comp. Courts Act the appt. of all 5 jurors is the work of the Court — doubtless swayed by influence of counsel as to persons likely to be of real assistance — imagine the hopeless confusion in a sm. cause Court in Mysore, and the endless delay while one party clamored for one person as juror & the opposite party

made objection, —. Moreover even among the outside members of the Bar leading citizens of professional men in even Bangalore or Mysore how many can be found capable of appreciating evidence?— quite small minority — & of those how many would be exempt from sitting as jurors?— certainly a considerable proportion — & of those very few are left capable of ~~what~~ owning any such purpose as jurors whose only duty would be to assist a trained legal ~~Assessor~~ judge to appreciate evidence as to facts —

For that reason alone I consider the proposed unworkable & most unexpedient — It is

Last Sheet '08

I would most humbly submit an error
to be fraught with possibilities of grave & serious
& injurious results to the ordinary provisions
of English Civil procedure, the evolution of
which
hundreds of years, upon a country like the
conditions prevailing are beyond all
Comparison different from those prevailing
in England — yet it has been lightly under-
taken by men who have absolutely no
knowledge of the conditions existing in
the Country for, which & those provisions have

(5)

Gradually evolved -

Sec. 103 of the County Courts Act is on a very different basis - In any county there is a likelihood that questions demanding the assistance of experts to enable the Court to arrive at a conclusion thereon may arise. To meet this contingency all counties are empowered to summon & hear witnesses & under this section any County Court is empowered to summon such experts to assist as aforesaid

Further if that provn be made in place of
the present clause 8: I can see no objection
to it whatever provided though I would suggest
that in practice it should be limited to
Bangalore & Mysore Cities ... Kolar Gold Fds
since these are the only places in which any
real ~~advantage~~ advantage from such
a provn might reasonably be expected
to be derived -

In conclusion I will again quote from the letter

W. D. Ln. Narasinga Rao on the subject of Cl. 7 & 8

He says

" Trial by jury is certain to promote delay — & will open a new field of learning by a majority of the jurors that can be had in Mysore for several years to come — The system is too much in advance of the sense of public duty & the attainments of the people in general The advantage derivable is not when compared with the evils that may be expected to result —

Mysore
22.6.11

R. Rathnam.
Dist. Judge
Mysore Dt.

Legislative 10 Mysore
2576/11

To
The Dewan
Mysore

Sir,

I am personally directed by the Dewan to submit herewith my notes for Non-Suit & Jury trial of Small Causes. I regret the delay in submitting them, due to unusually heavy work I had during this week and to the time needed for a study of the questions.

With regards, I remain

Yours Sincerely,

D. M. Narasimha Rao

J 46 73

Non-Suit

Object :- This provision which partakes of the nature of Equitable relief must be considered with reference to the two existing provisions of the Civil Procedure code of the like character viz Sec 373 relating the withdrawal of suits and Sec 623 relating to review

Section 373 C.P.C Withdrawal of Suits:

2. Sec 373 enumerates the precise grounds on which a withdrawal of the suit with liberty to bring a fresh one, subject to the law of limitation, can be legally permitted viz (a) "That the suit must fail by reason of some formal defect" or (b) "That there are sufficient grounds for permitting him (the plaintiff) to withdraw from the suit." That insufficient or inconclusive character of the evidence does not justify an order under Sec 373 is a well settled proposition of law. In Watson versus the collector of Zillah Raj Shahye, 13 moore Indian Appeals, page 160, their Lordships of the Privy Council made the following observations

"We have not been referred to any case, nor are we aware of any authority which sanctions the exercise by the country courts of India of that power which courts of Equity in this country occassionally exercise, of dismissing a suit with liberty to the plaintiff to bring a fresh suit for the same matter.

94

Nor is what is technically known in England as a nonsuit, known in those courts. There is a proceeding in those courts called a nonsuit, which operates as a dismissal of the suit without having the right of the party to litigate the matter in a fresh suit; but that seems to be limited to cases of misjoinder either of parties or of the matters in contest in the suit; to cases in which a meterial document has been rejected because it has not borne the proper stamp, and to cases in which there has been an erroneous valuation of the subject of the suit. In all those cases the suit fails by reason of some point of form, but their Lordships are aware of no case in which, upon an issue joined, and the party having failed to produce the evidence which he was bound to produce in support of that issue, — liberty has been given to him to bring a second suit, except in the particular instance that is now before them."

3 These principles have uniformly guided the decisions of the Indian courts, having been adopted in 16 Weekly Reporter page 276, 21 Weekly Reporter p. 291 and 23 Weekly Reporter page 345 and numerous other cases.

Section 623. C. P. C. Review :-

4... While sec 373 is intended to relieve the litigants from the rigidity of forms, sec 623 enables them to ask for the re-opening of cases so as to admit new and important matter or evidence which after the exercise of due diligence was not within the knowledge of the applicant or could not be produced by him at the time when the decree

decree was passed or order made. That these conditions should be clearly and strictly proved has been laid down in 16 Weekly Reporter page 7; and that the evidence discovered should be relevant; clear and conclusive or of such character that if it had been brought forward in the suit it might have altered the judgment has been enunciated in 23 Weekly Reporter page 323, 15 Moore's Indian Appeals p. 598 and 13 Mad J. L. R. Page 73:-

Character ting to

5.... A careful consideration of these two legal provisions shows that the Legislature has made adequate safeguards against injustice traceable to defective forms or ignorant omission to produce important evidence. But the provision of nonsuit in the Emale Cause Bill goes very much farther as it seeks to give relief even to such parties as fail to produce important evidence either intentionally or through carelessness, a policy whose expediency must be open to reasonable doubt.

Non-suit militates against rules of proof and presumptions

6.... Besides, the introduction of nonsuit cannot be accomplished without offending the basic principle that has hitherto guided the decisions of the courts and also the presumptions authorized by the existing laws. The former has reference to the provisions relating to the burden of proof and their legal effect. A plaintiff or defendant on whom the burden lies must discharge it satisfactorily or take adverse judgment. And evidence not made use of during trial cannot be utilized afterwards except when permitted under See 623 C. P. Code. (23 Weekly Reporter page 323). But the

But the new principle practically introduces an exception to the earlier rule. Again, illustration (g) to sec 114 Indian Evidence Act provides for the presumption "that evidence which could be and is not produced would, if produced be unfavourable to the person who withholds it: while Non-Suit supersedes it to some extent.

Its only favourable argument :-

7..... The only argument in favour of nonsuit is that though it is unknown to Indian Law, it is recognized in courts of Equity in England. But is at best a very inconclusive one. Because it does not clearly follow that what is suited to the requirements of England will be appropriate to those of India and many an instance can be quoted to show that a logical extension of this argument would certainly tend to revolutionize the Systems of Indian Law.

Non-Suit greatly restricted in England by Legislature :-

8... What is more important than this is the circumstance that nonsuit even in English courts of Equity has, in the light of experience, been rendered a matter of slight importance." It was a term peculiar to the English common Law courts before the judicature Act, and was simply the expression of the opinion of the court that, apart from the merits, the plaintiff's case was incomplete. It did not in any way act as a bar to his bringing another action for the same cause. It might be entered either at the wish of the Plaintiff himself (to whom it was of course much more beneficial than judgment for the defendant) or by direction of

direction of Court against the will of the Plaintiff.

The matter now is of no great importance, for, although judgment of Nonsuit still exists, it has, since the Judicature Acts, the same effect as a judgment on the merits, unless the Court otherwise directs." Thus a tendency against the frequent application of the principle of Nonsuit is evident from the progress of legislation in England.

Non-suit partially defeats Speediness and finality of disposal :-

9..... The Chief aim of the Special Procedure prescribed for the trial of small cause suits is to secure their speedy and final disposal; and it cannot be doubted that the principle of Non suit militates against it to some extent. And in considering the propriety of borrowing the rare practice of the English Common Law Courts - with apparently nothing to limit the discretion of the local Small Cause Courts, we must pay due regard to the far more intricate and costly suits that the former Law Courts try than what the latter courts of mysore do. When Nonsuit is not allowed in regular suits - involving no pecuniary limits, it might reasonably appear that it is needless in the case of comparatively trifling suits cognisable by the Small Cause Courts :-

Examination of the alternatives relative to Nonsuit :-.....

10..... Now in respect of Nonsuit, the following chief alternatives may exist :-

(a) Existence of evidence was known at the time of the first suit and its character was important

(b). Existence of evidence was known but its character unimportant

(c) Ditto – not known and its character important

(d) Ditto – not known and its character unimportant

(e) Non-existence of evidence offered in the second suit.

(a). In the first case, there might again be two alternatives: (1) either the evidence was sought to be offered and adjournment or opportunity was declined by the Court or (2) no allusion at all was made to it. In the case of the first alternative, the party concerned has already a sufficient legal remedy in the form of revision. In the second case, the omission to attempt production of the evidence might be traceable to either wilfulness, negligence or erroneous estimate of the value of evidence; and in none of these cases would it be proper to relieve a party from the consequences of his own fault.

(b). The second alternative is much weaker than the first in as much as the evidence is unimportant in the sense that it cannot lead to a decisive opinion. In such a case, a strong bait is thrown before the litigants for instituting profitless litigation calculated to prejudically affect their economic position

(c). This doubtless constitutes a reasonable ground for re-opening the case; but the provisions relating to review already provide the requisite remedy. – Hence, no suit is not needed even in this case.

(d). Nonsuit would be of little benefit where the evidence is unimportant. This alternative is subject to the same objection as (b).

(e). The probability of fabricating evidence oral and documentary - to sustain the second suit is perhaps one of the strongest objections against the provision of nonsuit as contained in the Small cause court Bill. It cannot be denied that the system opens a wide door for false evidence; for where the necessary conditions for its manufacture exist - such as factious spirit, excessive zeal in the success of a cause, want of sufficiently strong tone of morality &c, which are most commonly met with in this country, it is certain to lead to a perversion of justice resulting in many economic evils and ultimate diffidence in courts of justice. Even in England where the sense of public duty, as gauged from the keen contests in elections relating to representative institutions and from the cheerfulness with which private citizens sacrifice their time, money and even their existence for the good of the state, is far richer than that obtaining in India, the policy has been to greatly curtail the sphere of nonsuit. What was originally the rule as now proposed in mysore has become a rare exception in England by the intervention of the Legislature in the shape of the judicature Acts. And in point of education too, there is great disparity between England and mysore, the proportion of the literate being 90 p.c. in the united Kingdom as against 5 p.c in mysore.

Submitted as personally directed by the Diwan:.

D. M. Narasimha Rao

25/6/11

Trial by jury in Small Cause Suits above Rs 50:-

Summary of favourable arguments :-

From the discussion in the Legislative council, dated the 27th April 1911, about the provision relating to the trial of Small cause suits by a Composite Court consisting of a profe and three jurors it is seen that the following arguments were advanced in support of it :-

(a) The successful working of Benches of magistrates.
(b) Provisions relating to the trial of some criminal cases by profe and jury
(c) Finality of decisions in Small cause Suits :,
(d) "The profe himself will feel that a great deal of burden has been removed."
(e) The system prevails in English County Courts.

Their force discussed. Consideration of the first argument:-

2 ..... (a) To begin with, Each of these arguments will be briefly considered. The first one is merely analogical in its character; but there can be no fair analogy between a non-composite and a composite court. Benches of magestrates contain merely a plurality of non-stipendiary profes; and their character is not mixed or composite as is that of a Small cause Court in which a stipendiary profe will be associated with non-stipendiary jurors. Granting that Benches of magistrates in mysore have been working satisfactorily, we see that they radically differ in constitution from the Small cause Courts of composite character and that therefore, the analogical argument must fail

Consideration of the Second argument:-

(b) The second argument ignores the primary distinction between criminal and civil cases. An institution necessary for criminal cases cannot, without further argument, be contended to be indispensable for civil ones. In criminal cases, especially of the graver kind, a jury is perhaps the best tribunal that could be devised for the investigation of truth. There the element of moral doubt enters largely into the consideration of the case, and that can be best measured by a popular tribunal. Opinion in almost all civilized countries is unanimously against subjecting a man to serious punishment as a result of conviction before a people sitting without a jury; and probably the judges themselves or a great majority of them would be the very first to depricate so great a responsibility. But civil causes stand on altogether a different footing. Here the issue must be determined one way or the other on the balance of probabilities and a single people would probably be a better tribunal than the combination of people and jury. Even if it be assumed that he would on the whole come to the same conclusion as a jury deliberating under his directions, he would come to it more quickly owing to his special training and aptitude. Summing up would be unnecessary and the addresses of counsel would inevitably be shortened and concentrated on the real points at issue. As a result of these a priori considerations, we find that trial of civil cases with the aid of

aid of jury is peculiar only to a few countries and as will be subsequently shown, that even there the system is becoming unpopular and narrower

Consideration of the 3rd argument :-

(c) The third argument of finality, if logically extended, must render a jury necessary in all cases in which judgments, decrees or orders are final according to law In point of importance or responsibility, a Small cause decree above Rs 50 cannot be compared with the non-appealable sentences of a Presidency magistrate not exceeding six months' imprisonment or fine of Rs 200 or of Courts of session, District magistrates and First class magistrates, not exceeding one months' imprisonment or fine not exceeding 50 Rs. Yet the need for a jury in the latter cases of distinctly graver responsibility has not seriously occurred to any Legislature in India. To obviate the evil consequences, if any, of the finality complained of, there exist less cumbersome and doubtful expedients than a jury; and in fact the power of revision is largely enhanced by the Bill in point

Consideration of the 4th argt :-

(d) A people accustomed to weigh far more complicated evidence than would be forthcoming in Small cause suits and familiar with the task of deciding suits of much greater consequence, would not complain of the light burden that Small cause

small cause suits involve. The fourth argument, based upon the possible feeling of judges, is not supported by experiential considerations. On the contrary it is opposed to the consideration that a trial by jury increases the burden on the judge as it necessarily involves taking down depositions at much greater length than now and the summing up of the facts to the jury.

Consideration of the 5th and last argument:-

(e) The System of trying certain civil causes with the aid of a jury does doubtless exist in the county courts of England; but irrespective of the peculiar conditions obtaining in India and mysore at the present day, this argument cannot carry much weight. In fact, it would be misleading to a degree. As against its existence in the county courts, its non-existence in Chancery and Admiralty proceedings in England and the non-recognition of civil juries in France and many other countries may be quoted. Secondly this argument fails to take note of the significant change of policy initiated by the English Legislature many years ago in respect of both the civil and criminal cases. Before 1883, either party had an absolute right to have issues of fact in an action in the Queen's Bench Division tried by jury. But the rules of the Supreme Court dated 1883 (Order xxxvi) profoundly changed the position. Now, unless

unless in certain actions; mainly of tort, in which a jury is as of right, a jury can only be obtained by application of a party to the action, subject to the power of the court to direct trial without a jury of any issue requiring prolonged examination of documents or accounts or scientific or local investigation. The modification with respect to criminal cases is even more drastic and comprehensive and the reasons that led to it are of peculiar value in judging the present question. The common law of England required jury for every criminal case excepting contempts, but this direction having soon found to be greatly inexpedient, the legislature introduced what is called a Summary proceeding in which there is no jury and the party accused is either acquitted or convicted according to the opinion of the profe alone. In his celebrated commentaries on the laws of England Stephen calls this " an institution which is designed for the greater ease of the subject, by doing the offender speedy justice, and by not harassing jurymen with frequent attendances to try every minute offence." (Page 265 - Vol IV - 15th Edition). By various Acts of Parliament such as the Summary jurisdiction Act 1848, 1879, 1884 and 1889, the scope of the Summary jurisdiction has been gradually extended so as to apply it to a great

a great many offences such as (i) frauds against Excise and other revenue laws; (ii) minor offences punishable only with pecuniary penalties; and (iii) Even graver offences under the Larceny Act 1861, Malicious Designs Act 1861, offences against the person Act 1961 &c: punishable with imprisonment. Thirdly, the argument in question overlooks the importance of cases cognisable by County Courts as contrasted with the trifling character of those falling within the jurisdiction of the local Small Cause Courts. Had the English County Courts been of the character of Small Cause Courts alone, there might have been some force in the contention. But the two are very dissimilar, as may be seen from the following description of the jurisdiction of the County Courts :-

(a) In common law actions, the Court has jurisdiction in all personal actions founded on <u>Contract</u> or <u>Tort</u> (Except actions for breach of promise of marriage, libel, slander, or seduction) provided the claim is not more than 100£. If more, the consent of parties confers jurisdiction.

(b) In actions of replevin, which are generally brought in cases of wrongful distress for rent, the County Court has jurisdiction up to any amount.

(c) In actions for the recovery of land or tenements, the County Court has jurisdiction where neither the annual value nor rent of the property in dispute exceeds 100£.

(d) It can, with the consent of parties, try any action

any action in which the title to any toll, fair, market or franchise comes in question.

(e) It has also, under its common law jurisdiction, power to try an action brought to recover the balance of a partnership, or any legacy under a will, or the distributive share of personal estate under an intestacy, provided in each case that the amount claimed does not exceed 100 £.

(f) It has, moreover, power to try any common law action where the parties so agree by a memorandum signed by them or their solicitors.

(g) Besides, it has Equitable jurisdiction concurrently with the High Court in the following actions provided the amount of the estate, property or sum involved does not exceed 500 £ viz (i) administration suits; (ii) actions for the execution of trusts; (iii) for foreclosure or redemption of mortgages; (iv) for the dissolution of partnerships; (v) for specific performance or rectification of agreements for the sale or lease of any property; (vi) for relief against fraud or mistake and (vii) proceedings relating to the maintenance of infants or under the Trustee Acts.

(h) Finally, special jurisdiction has been conferred on the county courts by statutes under the Employers Liability Act 1880, the Workmen's Compensation Act 1906, the Bankruptcy Acts 1883 and 1890, the Companies Winding up Act 1890, the Intestates. Act 1873 and 1875 and the Admiralty jurisdiction Acts 1868 and 1869.

In the light of these remarks bearing upon the wide jurisdiction of the county courts, it will not be difficult to see the appropriateness of the System of trial by jury, born, as it were, on the English soil. In the absence of Statistics it is difficult to assert whether cases of the nature of the local small cause were ever tried with jury largely or even occassionally in England; but the probabilities are against such a contingency as the policy has been, as we have seen with respect to the steady and extensive growth of the Summary jurisdiction in criminal cases, to release the disposal of petty claims from the unavoidable disadvantages of trial by jury.

The proposed scheme of jury. 3... So much about the arguments advanced in support of the small cause jury trial. We might now turn our attention to the more important of the objections that could reasonably be urged against the proposal actually made, which is to the effect that the either party to a small cause suit above Rs 50 may make an application for jury, that the Judge shall grant it, that the Court shall be composed of the Judge and three jurors to be selected in accordance with the rules to be framed by the Chief Court on this behalf, that the Judge shall settle what are the questions of law and facts arising in the case, that the Judge shall preside at the trial having the sole

sole power to decide the questions of law, and that on facts the decision shall be in accordance with the opinion of the members of the composite court, the judge having a casting vote whenever such opinion is equally divided. The speech of the member in charge of the Bill further goes to show that a list of persons eligible to be elected as jurors would be prepared and each party would be entitled to select therefrom one juror, the judge selecting the third juror. These are the salient provisions relating to the trial by jury.

First objection against the scheme.

4 - As the provisions stand, a corrupt or ignorant jury finally decides the cause without practically any redress. The judge's casting vote will prove of no avail whatever where the verdict of the jury is unanimous. This over strengthening of the jury is without parallel in India or England. Even in criminal cases where more responsible issues are at stake, the jury is subjected in India to a degree of control that affords substantial guarantee against miscarriage of justice. Under section 307 Cr. Procedure code, it is competent to a Court of Session to put off giving effect to such verdict of the jurors as are not agreeable to it and to make a reference to the High Court in the ends of justice; and the latter may exercise thereupon any of the powers which it may exercise on an appeal. The marginally noted results of the references made in the Presidencies of Madras and Bombay

Madras :- 52 cases out of 1334

Bombay :- 26 ——— 237

madras and Bombay during the year 1909:- serve to show that erroneous verdicts are still common. Even this restriction over the verdict of juries under the criminal Procedure code must appear to be small when compared with what the juries of the English county courts, held up as the model for the proposed Small cause jury court, are subject to. In the first place the jury of a county court consisting of eight persons must be unanimous in its verdict: (Page 329 - Slep - Comm.) And, in the second place, the judge may grant a new trial on the ground that the verdict of the jury is against the weight of the evidence or that the damages awarded are excessive or insufficient (page 329 - ditto). The status of a jury in county court very nearly approaches that of assessors in India. Compared with this, what is the position of the local - Small cause judge with respect to the jury, regarding facts? He is practically merged in the composite body with but a casting vote that can be exercised only when the jury is not unanimous. He has no sort of control over the jury on a question of fact, unlike the County court judge

Second objection against the Scheme:-

5. The proposed scheme must increase the delay in the disposal of Small cause suits above Rs 50, as provision has to be made for service of jurors, their casual absences after service, addresses of counsels and the summing up of the judge.

Third objection against the scheme:-

6. Trial by jury cannot be said, as far as India is concerned, to be a question about the utility and

ability and reliability of which expert opinion in the country is unanimous. In British India the Government concerned have so far directed trial by jury under sec 269 Cr. Pro: Code in a comparatively small fraction of cases coming before the courts of session; and in Mysore, no sessions judge has been authorized to hold such trials. What does this attitude indicate? Not that the sessions cases are not sufficiently onerous in their character but that jurymen on whose ability and integrity of character the Government can safely rely are still not as common as desirable or necessary. If so, how could the application of the jury principle to small cause suits be justified? While the policy of the Government, on the one hand, distinctly tends to appear as inconsistent, there is on the other, some ground for the inference that they failed to examine the question thoroughly in view of the fact that the small cause suits are of a comparatively trifling character.

Out of 116 sessions cases in 1909-10, only 11 were tried by jury and that in the Chief Court.

Fourth objection against the jury principle itself:

7. Under existing conditions, the average duration of contested small causes was 101.03 days in 1909-10 as against 93.68 in the previous year. The average duration of such suits above Rs 50 is likely to be greater than that of suits below and up to Rs 50 and of those above Rs 50, put together. But even taking 190 days as the average duration, and the average number of adjournments at four, we at once see the grave danger in keeping

keeping a free standing jury, as it were, for each case for such a long period. As long as civil processes are served in the present manner - and there is no reasonable hope of materially improving it, in the near future - this evil cannot be avoided. Therefore, the proposed jury system will enable unprincipled parties and jurors to make common cause for selfish and dishonest ends, unlike the system, for instance, for which the Criminal Procedure Code provides very efficient guarantees.

Fifth and last objection against the principle of the jury system itself as applicable to Small Cause Suits :—

8. The provincial average of small cause contested suits decided to the total number disposed of in 1909-10 is 16 per cent, which is however too low in the case of suits above Rs 50. Taking it at 25 per cent, we find that the total number of cases triable by jury will be as follows :—

	Contested	Total
Mysore :—	85	350
Shimoga :—	125	500
Bangalore :—	250	1000
	460	

This is merely a very rough estimate, the exact figures not being available. Though the trial by jury is optional, list of jurors ought to be prepared on the basis of the total number of jury cases determined from the available statistics. If this is done, 720 jurors would be necessary; and to guarantee the service and attendance of this number, twice the number at least must be selected and placed on the list as is done in preparing lists

of assessors for Sessions cases. It is extremely doubtful if proper persons numbering nearly 1500 would be available even in the cities of Bangalore, Mysore and Shimoga to which the provision would be applicable, in addition to the number required for the criminal cases. Even if such number be forthcoming and the first four disadvantages be overlooked, it is more than doubtful whether the value of decisions by jury would even counterbalance the evils of enforcing the attendance of jurors to the detriment of their avocations. As it is, our experience shows that persons are generally unwilling to serve as assessors; and excuses, often groundless, are urged by them whenever they are served and brought before the Court. In judging this, the comparatively trifling value of the great bulk of Small Cause Suits must be borne in mind.

Miscellaneous matters if jury principle is adopted:-

9. So much against the jury principle itself. If nevertheless it is adopted, the parties should never be given the right of choosing one juror each. Because such a right is unknown in the County Courts or elsewhere as it has a distinct inclination towards impairing the independence of the jurors. All that they can be allowed is the right to take objection on specific grounds to the selection of jurors made by the Court, as in the County Courts and under the Criminal Pro. Code. Besides, the Bill should contain provisions obliging persons to serve as jurors, and to take oath &c., matters which cannot be properly provided for in the rules framed by the Chief Court :—

Conclusion :- 10. On the whole, there is much reason to apprehend that the System is far too much in advance of the education and sense of public duty in this country - and that it is inexpedient to adopt it for small causes when it is still very sparingly applied to criminal cases notwithstanding the ancientness of the criminal - Procedure code authorizing it :

Submitted as personally directed by the Dewan

D. M. Narasimhakar

25/6/11